

HUMAN SERVICES BOARD

# INTRODUCTION

## LEGAL AND FACTUAL ISSUES

The DCHC or Katie Beckett program provides more liberal financial eligibility criteria for Medicaid benefits to certain children with extraordinary medical needs. The parties agree that to qualify for the Katie Beckett program

it must be shown that a child requires a level of medical and/or personal care that is provided by a hospital, nursing home, or intermediate care facility for the mentally retarded (ICF-MR), and that such care can be provided in the child's home at no greater cost than in an appropriate institution. See W.A.M. § 200.23. The stated goal of the program is to encourage and support families to provide home-based care for children who might otherwise be in an institution.

In this case there does not appear to be any dispute that the petitioner's parents provide care for him for less cost than they would be charged if the petitioner were admitted to an ICF-MR. The issue, however, is whether sufficient evidence establishes that the petitioner's medical and developmental status is such that he requires such a level of care—i.e., would he be eligible for admission into an ICF-MR?

In addressing this question the Department maintains that in Vermont the criteria for admission to an ICF-MR is set forth as follows (per a Department Memorandum dated February 24, 1993):

- a. The individual is mentally retarded or has a related condition, AND
- b. The individual has one of the following:

(1) A severe physical disability requiring substantial and/or routine assistance in performing self-care and daily living functions;

(2) Substantial deficits in self-care and daily living skills requiring intensive, facility-based training; OR

(3) Significantly maladaptive social and/or interpersonal behavior patterns requiring an ongoing, professionally-supervised program of intervention.

Although the petitioner takes issue with whether the federal regulations consider physical disability, the fact that the above criteria are set forth in the disjunctive appears to render them more liberal than the federal definitions cited by the petitioner. Also, due to the fact that the petitioner is alleging some physical as well as developmental disabilities, it appears that application of the above criteria would be to his benefit. (See also Fair Hearing No. 19,059.)

The following facts do not appear to be in dispute. Several are taken nearly verbatim from the petitioner's

**Memorandum of Law.**

#### FINDINGS OF FACT

1. Petitioner was born prematurely on March 9, 2005 after a thirty-eight week gestation period. At birth petitioner weighed only five (5) pounds and was diagnosed

with Down syndrome. At the age of one month petitioner was evaluated by the Pediatric Cardiology Division of Baystate Medical Center in Springfield, Massachusetts. His Echocardiography Report shows his "intra-atrial septum bows to the right and there is a [left to right] shunt noted across the intra-atrial septum". Additionally, the doctor noted a "trivial tricuspid regurgitation." The report concluded that petitioner had Mild PPS or peripheral pulmonary stenosis.

2. In addition to the Mild PPS petitioner developed problems with feeding and was placed on Alimentum. At the age of four months, petitioner's weight was below the third percentile on the standard pediatric chart. He experienced difficulty eating any foods that did not have a pureed texture and exhibited a tongue thrust.

3. Petitioner was noted to have an elevated level of Thyroid Stimulating Hormone ("TSH") and was diagnosed with hypothyroidism. As a result, he was placed on Synthroid to supplement the levels of thyroid hormone in his body.

4. With regard to petitioner's hearing, he has frequent ear infections, which have raised issues as to his future auditory functioning and required the placement of tympanostomy tubes.

5. As is common with Down syndrome, petitioner has low muscle tone [hypotonicity], which has impacted his respiration and bowel elimination, as well as his ability to move around safely and independently.

6. Due to these significant health concerns, petitioner is receiving early intervention services through the Family, Infant and Toddler Program. Specifically, he receives occupational therapy, nutritional consultation, physical therapy, specialized communication instruction and speech language pathology services. His current level of functioning is delayed for his age and he is completely dependent on others for support in all areas.

7. According to the medical evidence provided by the petitioner his physical and occupational therapy amounts to no more than one hour per week. His parents receive ongoing advice regarding his feeding, diet and medication.

8. Other than the above, and periodic check ups from his doctors, there is no indication that the petitioner receives any active medical treatment or supervision on a regular and frequent basis. He has never been hospitalized, and it does not appear that he has ever received unusual or prolonged acute medical treatment or care.

9. There is no question that the petitioner has developmental delays. However, nothing in the record suggests that the petitioner's condition would qualify or is appropriate for institutional care of any type.

ORDER

The Department's decision is affirmed.

REASONS

The petitioner appears to argue that because he receives some of the same *types* of care and supervision offered in an institution, that he meets the definition regarding institutional *level* of care. This is simply a basic misreading of the federal and state Katie Beckett eligibility requirements. The petitioner may be correct that the regulations do not require that a child must demonstrate a need for *24-hour* care. However, nothing in the medical record or the facts alleged by the petitioner remotely suggests that he would be appropriate for institutional care, either now, or in the foreseeable future. Some of the treatment he receives may be similar to treatment offered in an ICF-MR, but *only* in type, nowhere near in level. It certainly appears that the petitioner's parents have made considerable personal sacrifices and have incurred

significant financial costs in getting treatment for him. Unfortunately, however, this is far from the criteria necessary for the petitioner to be eligible for the Katie Beckett program.

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